

No. 24-1285

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

APPLE INC.,

Appellant,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

MASIMO CORPORATION, CERCACOR LABORATORIES, INC.,

Intervenors.

Appeal from the United States International Trade Commission,
Investigation No. 337-TA-1276

**JOINT MOTION OF APPELLEE INTERNATIONAL TRADE
COMMISSION AND INTERVENORS MASIMO CORPORATION AND
CERCACOR LABORATORIES, INC. FOR AN EXTENSION OF TIME TO
FILE THEIR RESPONSE BRIEFS**

RONALD A. TRAUD
Attorney Advisor
Office of the General Counsel
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
Telephone (202) 205-3427

JOSEPH R. RE
Counsel for Masimo Corporation and
Cercacor Laboratories, Inc.
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404

Dated: May 2, 2024

Pursuant to Federal Circuit Rules 26(b) and 27(a), Appellee U.S. International Trade Commission (“the Commission”) and Intervenor Masimo Corporation and Cercacor Laboratories, Inc. (“Masimo”) respectfully request a 44-day extension of time to file their response briefs in this appeal. This motion is made at least seven days before the due date for the briefs. *See* Fed. Cir. R. 26(b)(1). Presently, the response briefs are due on Wednesday, May 15, 2024; the extension sought herein would extend the due date to Friday, June 28, 2024. This is the Commission’s and Masimo’s first request for an extension of time in this matter.

Good cause exists for the requested extension, as set forth more fully in the attached declaration of Ronald A. Traud, the Commission’s principal counsel. *See* Fed. Cir. R. 26(b)(3). The Commission requires the additional requested time to accommodate the obligations of Mr. Traud, who has been advising the Commission on other matters before being able to turn to this brief, and who has a pre-scheduled, non-refundable vacation planned that will interfere with the completion of this brief. Moreover, Apple has appealed many factually-intensive issues here, and additional time is warranted in view of the detailed record.

Good cause also exists for the requested extension, as set forth more fully in the attached declaration of Joseph Re, Masimo’s principal counsel. *See* Fed. Cir. R. 26(b)(3). Masimo requires the additional requested time to accommodate the obligations of the attorneys for Masimo involved in or contributing to this proceeding. These attorneys are involved with numerous other matters that have briefing and oral argument deadlines that necessitate the requested extension. And

again, Apple has appealed many factually-intensive issues here, and additional time is warranted in view of the detailed record.

Apple has stated that it would not oppose this motion if the Commission and Masimo agree to not oppose a potential future motion to expedite the scheduling of oral argument. Because it is unclear what that future motion will entail or what scheduling conflicts may exist when briefing is complete, that condition is unacceptable to either the Commission or Masimo. Accordingly, we understand that Apple will oppose this motion.

For the foregoing reasons, the Commission and Masimo respectfully request that the time for filing the response briefs in this appeal be extended until June 28, 2024.

Dated: May 2, 2024

Respectfully submitted,

<p><u>/s/ Ronald. A. Traud</u> DOMINIC L. BIANCHI General Counsel WAYNE W. HERRINGTON Attorney Advisor RONALD A. TRAUD Attorney Advisor Office of the General Counsel U.S. International Trade Commission 500 E Street, S.W. Washington, DC 20436 Tel: (202) 205-3427 Fax: (202) 205-3111 ronald.traud@usitc.gov</p> <p><i>Counsel for Appellee International Trade Commission</i></p>	<p><u>/s/ Joseph R. Re</u> Joseph R. Re <i>Principal Counsel</i> Stephen C. Jensen Sheila N. Swaroop Brian C. Claassen KNOBBE, MARTENS, OLSON & BEAR, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 (949) 760-0404</p> <p>Jonathan E. Bachand KNOBBE, MARTENS, OLSON & BEAR, LLP 1717 Pennsylvania Avenue N.W. Suite 900 Washington, DC 20006 (202) 640-6400</p> <p><i>Counsel for Intervenors Masimo Corporation and Cercacor Laboratories, Inc.</i></p>
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DECLARATION OF RONALD A. TRAUD

I, Ronald A. Traud, declare as follows:

1. This declaration is made in connection with the Joint Motion of Appellee International Trade Commission and Intervenor Masimo Corporation and Cercacor Laboratories, Inc. for an Extension of Time to File Their Response Briefs, seeking an extension of time of 44 days to file their response briefs in the above-captioned appeal. Presently, the response briefs are due on Wednesday, May 15, 2024; the extension sought therein would extend the due date to Friday, June 28, 2024. This is the Commission's and Masimo's first request for an extension of time in this matter.

2. Good cause exists for the requested extension. I am the Commission's principal counsel in this case and am preparing the Commission's brief in this appeal by myself. I am the only attorney in the Commission's General Counsel's Office (which is responsible for preparing briefs to this Court) familiar with the facts of the investigation giving rise to the present appeal.

3. The Commission requires the additional requested time to accommodate my obligations, as I have been advising the Commission on other matters before being able to turn to this brief, and I have a pre-scheduled, non-refundable vacation planned that will interfere with the completion of this brief. As a result of these obligations, I will need an additional 44 days to complete the Commission's brief.

4. Based on the foregoing, the Commission respectfully requests a 44-day extension. Absent an extension, the deadline for the Commission's and Masimo's response briefs would be May 15, 2024. With a 44-day extension, the deadline for the Commission's brief would be June 28, 2024.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 2, 2024

/s/ Ronald A. Traud/

Ronald A. Traud

Office of the General Counsel

U.S. International Trade Commission

500 E Street, S.W.

Washington, DC 20436

(202) 205-3427

Counsel for the U.S. International Trade Commission

Appeal No. 24-1285

IN THE
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APPLE INC.,

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UNITED STATES INTERNATIONAL TRADE COMMISSION,

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Investigation No. 337-TA-1276

**DECLARATION OF JOSEPH R. RE IN SUPPORT OF APPELLEE'S AND
INTERVENORS' JOINT MOTION FOR EXTENSION TO FILE
RESPONSE BRIEFS**

I, Joseph R. Re, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner at Knobbe Martens Olson & Bear LLP, counsel of record for Intervenor Masimo Corporation and Cercacor Laboratories, Inc. (“Masimo”) in the above-captioned appeal. I have personal knowledge of the facts in this declaration, and if called and sworn as a witness, could testify competently to them. I make this declaration in support of Appellee’s and Intervenor’s Joint Motion For An Extension of Time To File Their Response Briefs.

2. Good cause exists for the requested extension of time because the attorneys for Masimo involved in or contributing to this proceeding are also currently involved in numerous matters, including the representative matters below:

- a. An *inter partes* 19 C.F.R. Part 177 proceeding before the Exclusion Order Enforcement Branch relating to ITC Investigation No. 337-TA-1276, the investigation on appeal;
- b. *Masimo v. Apple*, 20-cv-00048-JVS-JDE (C.D. Cal.);
- c. *Clearplay, Inc. v. DISH Network L.L.C.*, Appeal No. 23-2134 (Fed. Cir.);
- d. *PIPStek, LLC v. Biolase, Inc.*, 23-cv-0011-JPM (D. Del.); and
- e. *VIZIO, Inc. v. Polaris PowerLED*, IPR2024-00073 (PTAB)

3. In view of the obligations in these matters, including briefing and oral argument deadlines involving counsel involved in or contributing to this appeal, the

requested extension of time to file Masimo's response brief is necessary. Without an extension Masimo will suffer hardship related to the unavailability of the attorneys contributing to and/or involved with this appeal to make contributions to this case due to other obligations.

4. On April 30, 2024, Masimo contacted counsel for Apple to provide notice of this extension and to seek Apple's position on this motion. It is expected that Apple will oppose the motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 2, 2024 at Irvine, California.

/s/ Joseph R. Re
Joseph R. Re

**CERTIFICATE OF COMPLIANCE
PURSUANT TO FED. R. APP. P. 27(d)(2)(A), 32(g)**

Pursuant to Fed. R. App. P. 27(d)(2)(A) and 32(g), I hereby certify that the attached motion complies with the type-volume limitation and typeface requirements. The response has been prepared in a proportionally spaced typeface (14-point Times New Roman font), and the motion contains 388 words according to the word-count function of the word-processing system (Microsoft 365).

/s/ Ronald A. Traud/

Ronald A. Traud

Office of the General Counsel

U.S. International Trade Commission

500 E Street, S.W.

Washington, DC 20436

(202) 205-3427

Counsel for the U.S. International Trade Commission

CERTIFICATE OF SERVICE

I, Ronald A. Traud, hereby certify that, on this 2nd day of May 2024,
I caused a copy of the foregoing **Joint Motion of Appellee International Trade
Commission and Intervenor Masimo Corporation and Cercacor Laboratories,
Inc. for an Extension of Time to File their Response Briefs**, to be served on
counsel of record via the Court's CM/ECF system.

/s/Ronald A. Traud
Ronald A. Traud
Attorney for Appellee
International Trade Commission
500 E Street, SW, Suite 707
Washington, DC 20436
tel. (202) 205-3427
fax (202) 205-2737
ronald.traud@usitc.gov